

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM ZANTELLO

Plaintiff,

CIVIL ACTION NO. 06-CV-10745-DT

vs.

DISTRICT JUDGE JULIAN ABELE COOK

SHELBY TOWNSHIP,
et al,

MAGISTRATE JUDGE MONA K. MAJZOUN

Defendants.

**SECOND OPINION AND ORDER DENYING IN PART PLAINTIFF'S
MOTION TO COMPEL (DOCKET # 14)**

On July 27, 2006 Plaintiff filed a Motion to Compel Discovery (Docket # 14), seeking an order to compel responses to his First Request for Production of Documents. Defendants responded to Plaintiff's motion. District Court Judge Julian Abele Cook referred said motion to the undersigned for hearing and determination pursuant to 28 U.S.C. § 636(b)(1)(A). All parties appeared through counsel for oral arguments on October 16, 2006. This motion is now before this Court for the third time.

* * * * *

Plaintiff seeks an order compelling Defendants to respond to his First Request for Production of Documents. Specifically, Plaintiff seeks responses to his Requests for Production of Documents numbers 2, 10, 12, and 13. Defendants contend that they either properly responded or objected to these Requests.

On October 24, 2006 this Court issued an Order (Docket # 21) granting Plaintiff's Motion to Compel as to his Request for Production of Documents number 2 and denying as moot his motion as to Request numbers 12 and 13. The Court also granted in part and held in abeyance in part Plaintiff's Motion to Compel as to his Request for Production of Documents number 10, which seeks the

complete personnel files of Defendants Underwood, Phelps and Francis. The Court held in abeyance its decision as to whether to compel Defendants to produce: (1) any documents within the personnel files of Defendant Francis that involve founded or unfounded allegations of malicious prosecution, false arrest, assault/battery, and/or excessive force made within the past 10 years; and (2) any documents within the personnel files of Defendants Francis, Underwood and Phelps over which Defendants assert a privilege relating to undercover assignments, open investigations, confidential sources or the deliberate process of supervisory officials. Defendants were ordered to produce any such documents to this Court for *in camera* review by November 16, 2006. No such documents were received by this Court. Consequently, this Court issued an Order to Show Cause why such documents had not been produced and why Plaintiff's Motion to Compel the production of the remaining documents at issue in Plaintiff's Request for Production of Documents number 10 should not be granted. (Docket # 24).

Defendants timely responded to the Order to Show Cause on December 13, 2006. (Docket # 25). In their response, Defendants state that a search revealed no documents that would be subject to the Court's *in camera* review as outlined in its Order dated October 24, 2006.

Based upon Defendants response, the Court hereby **DENIES** as moot Plaintiff's Motion to Compel as to its First Request for Production of Documents number 10 to the extent it seeks documents within the personnel files of Defendant Francis that involve founded or unfounded allegations of malicious prosecution, false arrest, assault/battery, and/or excessive force made within the past 10 years and documents in the personnel files of Defendants Francis, Underwood and Phelps over which Defendants assert a privilege relating to undercover assignments, open investigations, confidential sources, or the deliberate process of supervisory officials.

IT IS SO ORDERED.

Notice to the Parties

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. § 636(b)(1).

Dated: December 20, 2006

s/ Mona K. Majzoub

MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this order was served upon Counsel of Record on this date.

Dated: December 20, 2006

s/ Lisa C. Bartlett

Courtroom Deputy